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INTERFERENCE WITH CONTRACTUAL RELATIONS: A COMMON MEASURE OF DAMAGES

INTRODUCTION

In awarding damages for tortious interference with contractual relations¹ and for inducing the breach of contract, the courts apply three different theories:² (1) that the damages recoverable for the tort action are the same as the damages recoverable for a breach of contract;³ (2) that recovery may be had for damages that are the proximate result of the wrongful act as in negligence tort cases;⁴ (3) that the measure of damages is the same as that in intentional tort actions and includes recovery for mental anguish and punitive damages.⁵ Some courts even apply a combination of these measures in a single case.⁶ The disagreement concerning the correct measure of damages applicable in cases of interference with contractual relations has resulted in uncertainty in the law. The answers to the questions concerning the extent of the interferor's liability for consequential damages, recovery for mental suffering, and awarding of punitive damages are dependent upon which measure the court applies.

The purpose of this article is to inquire into the three different measures to determine whether there should be a common measure of damages in such actions. Only situations in which liability for injury has been found will be considered and no attempt is made

¹ Interference with contractual relations and inducing breach of contract are separate and distinct actions. Interference is broader; it compensates for damages resulting from the defendant's actions affecting the subject matter of the contract, and does not require proof that there has been a breach of contract. Note, *Interference With Contractual Relations: A Property Limitation*, 18 STAN. L. REV. 1406 (1966).

² *Interference With Contractual Relations in New England*, 38 B.U.L. REV. 285, 295 (1958); Note, *Damages Recoverable in an Action for Inducing Breach of Contract*, 30 COLUM. L. REV. 232 (1930).

³ See, e.g., *Western Oil & Fuel Co. v. Kemp*, 245 F.2d 633 (8th Cir. 1957); *Wilson & Co. v. United Packinghouse Workers of America*, 181 F. Supp. 809 (N.D. Iowa 1960).

⁴ See, e.g., *Anderson v. Moscovitz*, 260 Mass. 523, 157 N.E. 601 (1927); *Hooker, Corser & Mitchell Co. v. Hooker*, 89 Vt. 383, 95 Atl. 649 (1915).

⁵ See, e.g., *Lundgren v. Freeman*, 307 F.2d 104 (9th Cir. 1962); *Duff v. Engelberg*, 237 Cal. App. 2d 505, 47 Cal. Rptr. 114 (1965), establishing that California definitely applies the intentional tort measure of damages, and that actions against the breaching party and the interferor are cumulative rather than alternative.

⁶ E.g., *McNutt Oil & Refining Co. v. D'Ascoli*, 79 Ariz. 28, 281 P.2d 966 (1955), allowed punitive damages while limiting compensatory damages to the contract rule.

to deal with the separate problem of under what conditions liability should be imposed.⁷

CONTRACT MEASURE OF DAMAGES

The goal in awarding compensation to a party injured by breach of contract is to place the injured plaintiff in the position he would have been in if the contract had been performed.⁸ In contract cases various expressions of this goal have been employed as rules limiting recovery of damages. One common expression of such a rule is that damages are recoverable if they are the proximate result of the breach, and requires that the rules of "proximate causation" be satisfied.⁹ The form of this rule is also applied in tort actions,¹⁰ in which the object is to compensate an injured plaintiff so as to place him in as good a position as he would have been if the wrong had not been committed.¹¹ When the measure of damages is stated in terms of proximate cause in a case involving interference with contractual relations it is impossible to determine whether the court is applying a contract rule or a tort measure, however, the amount of recovery will likely be the same.¹²

In a suit between the parties to a contract for a breach of that contract, the leading case sets forth the rule that "damages are recoverable only for those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made."¹³ This is not identical to the rule stated as applicable in tort, since the tortfeasor is often required to pay for injurious results he had no reason to foresee at all.¹⁴ Therefore, in an action for interference with contractual relations the amount recoverable will generally be greater if the tort rule is applied.

Frequently the courts do not discuss the theory upon which

⁷ See generally, PROSSER, *TORTS* § 123 (3d ed. 1964); Annot., 26 A.L.R.2d 1272 (1952); Annot., 84 A.L.R. 43 (1933); Carpenter, *Interference With Contractual Relations*, 41 HARV. L. REV. 799 (1928); Harper, *Interference With Contractual Relations*, 47 NW. U.L. REV. 873 (1953); Sayre, *Inducing Breach of Contract*, 36 HARV. L. REV. 663 (1923); *Developments in the Law of Competitive Torts*, 77 HARV. L. REV. 888 (1964); Note, *Interference With Contractual Relations: A Property Limitation*, 18 STAN. L. REV. 1406 (1966).

⁸ 5 CORBIN, *CONTRACTS* § 1002 at 31 (1964); MCCORMICK, *DAMAGES* § 137 at 561 (1935).

⁹ 5 CORBIN, *CONTRACTS* § 997 at 19 (1964), criticizing the use of the word "proximate" as inadequate for stating rules of recovery.

¹⁰ *Ibid.*

¹¹ MCCORMICK, *DAMAGES* § 137 at 560 (1935).

¹² This is particularly true in suits by a real estate broker for a lost commission. *E.g.*, Johnston v. Gustafson, 201 Minn. 629, 277 N.W. 252 (1938).

¹³ Hadley v. Baxendale, 9 Exch. 341 (1854).

¹⁴ 5 CORBIN, *CONTRACTS* § 1019 (1964).

they base the award. Although the theory is identified as contract, the court generally applies the rule that compensation may be had for injuries that are the natural and proximate result of the wrongful act.¹⁵ In *Swaney v. Crawley*¹⁶ in which the defendant induced the owner of real property to breach an executory contract of sale with the plaintiff, the court, after stating that the general rule of damages was applicable in tort and contract alike, said "the ruling seems sound in principle that the injured party is limited as a general rule, to such damages as might have been recovered for a breach of the contract itself."¹⁷ The court did not preclude the possibility of recovering exemplary damages in a case where express malice was shown,¹⁸ suggesting that certain distinctly tort damages may be applied while limiting consequential damages to the benefits of the particular contract. There is little difference between the results reached in *Swaney* and the results that would be reached in a typical negligence action, with the exception of possible recovery for mental anguish.

*Wilson & Co. v. United Packinghouse Workers of America*¹⁹ expressly applied the contract rule of damages limiting recovery to injuries reasonably supposed to have been in the contemplation of the parties at the time the contract was made to an action against a third party for inducing the breach of a collective bargaining agreement. In that case union officials influenced plaintiff's employees to refuse to work more than eight hours in any one day, and further directed strikes against the plaintiff corporation. The court stated that "while the Iowa Supreme Court has not ruled expressly on the measure of damages for inducement of breach of contract, it would appear likely that it would follow the contract measure of damages."²⁰ Courts limiting recovery for interference with contractual relations to recovery for breach of contract as stated in *Wilson* may feel that to allow the plaintiff recovery for unforeseeable results is a windfall and places the plaintiff in a better position than he would have been in if he sued for breach of contract. This reasoning is not sound. There is no reason why a wrongdoer should be given the benefit of contract damages at the injured plaintiff's expense.

Punitive damages are generally not recoverable in actions for

¹⁵ *Western Oil & Fuel Co. v. Kemp*, 245 F.2d 633 (1957); *Johnston v. Gustafson*, 201 Minn. 629, 277 N.W. 252 (1938).

¹⁶ 133 Minn. 57, 157 N.W. 910 (1916).

¹⁷ *Id.* at —, 157 N.W. at 911.

¹⁸ *Id.* at —, 157 N.W. at 912.

¹⁹ 181 F. Supp. 809 (N.D. Iowa 1960).

²⁰ *Id.* at 822.

breach of contract,²¹ however, most courts award punitive damages in actions for interference with contractual relations²² including courts applying the contract rule of damages.²³ In *McNutt Oil & Refining Co. v. D'Ascoli*,²⁴ a petroleum corporation induced the seller of a gas station to breach a clause restricting competition with the purchaser. Discussing the measure of damages the court said that actual damages were to be ascertained by the same standards as if the action were upon the contract instead of tort, but if the acts of the defendant were "wrongful, wilful and malicious in fact," punitive damages might be awarded. The weight of authority is clearly in favor of awarding punitive damages in actions for interference with contractual relations regardless of the measure of consequential damages applied.

Since most contracts before the court are commercial and the pecuniary interest dominant, recovery for mental distress resulting from a breach is generally denied.²⁵ When mental suffering is caused intentionally and accompanied by wilful torts such as defamation there may be recovery.²⁶ Recovery for mental anguish in interference with contractual relations cases is limited to these situations: intentional interference accompanied by elements of wilful torts.²⁷ Whether the measure of damages applied is contract or tort would have little effect on the issue of recovery for mental anguish providing the jurisdiction allows such recovery in contract actions involving elements of wilful torts.

The significance of applying the contract measure of damages in interference cases is not whether punitive damages or recovery for mental anguish is allowed, but that the amount recoverable as consequential damages may be affected. Whether the measure of consequential damages is the same in contract as in tort in a given case depends in part upon the contract rule applied (proximate cause or foreseeability at the time of contracting), and in part, upon how liberally "foreseeability" is construed.

TORT MEASURES OF DAMAGE

Most courts have applied a tort measure of damages (either analogous to negligent torts or intentional torts) to interference

²¹ 5 CORBIN, CONTRACTS § 1077 at 438 (1964).

²² Note, *Damages Recoverable in an Action For Inducing Breach of Contract*, 30 COLUM. L. REV. 232, 237 (1930).

²³ E.g., *McNutt Oil & Refining Co. v. D'Ascoli*, 79 Ariz. 28, 281 P.2d 966 (1955).

²⁴ *Ibid.*

²⁵ MCCORMICK, DAMAGES § 145 at 592-93 (1935).

²⁶ 5 CORBIN, CONTRACTS § 1076 at 427 (1964).

²⁷ Compare *Gould v. Kramer*, 253 Mass. 433, 149 N.E. 142 (1925), with *Steiner v. Long Beach Local No. 128*, 19 Cal. 2d 676, 123 P.2d 20 (1942).

with contractual relations actions.²⁸ Recovery against the interferor is allowed even if the plaintiff has proceeded against the party defaulting on the contract²⁹ and has received partial satisfaction.³⁰ When the court applies the negligent tort theory the rule is expressed in terms of direct and proximate results of the wrongful act, and recovery includes such loss of profits as the plaintiff can prove resulted from the interferor's acts.³¹ There is little difference between the application of this rule in tort or in contract. There is, however, a difference between the application of the rule of *Hadley v. Baxendale*³² and the application of foreseeability in negligence actions. In negligent tort cases foreseeability is generally based at the time of the wrongful act, not at the time of the agreement.³³ It has been suggested that application of the negligent tort theory would seem to have validity where the acts of interference are not malevolent in nature, and employ truthful but unjustified persuasion.³⁴ This view seems to overlook the tendency of the courts to deny recovery for negligent interference with contractual relations, and that the action requires intent and lack of justification.³⁵

A majority of courts treat the tort of interference with contractual relations as an intentional one and consequently allow greater recovery.³⁶ One state has even enacted a statute which provides for the recovery of treble damages for inducing or procuring the breach of a contract.³⁷ In *Wade v. Culp*,³⁸ a competitor induced Wade to breach his contract with the plaintiff, under which Wade was to develop an electric steak broiler to be marketed by the plaintiff, Culp. The court recognized that the measure of damages applied in such action was not uniform in all jurisdictions, that the plaintiff was entitled to recover for losses sustained as a direct and proximate result of the wrongful act, and stated that, "the correct rule is to hold the tortfeasor responsible for all of the conse-

²⁸ PROSSER, TORTS § 123 at 973 (3d ed. 1964).

²⁹ *E.g.*, *Swift v. Beatty*, 39 Tenn. App. 292, 282 S.W.2d 655 (Ct. App. 1954).

³⁰ *Duff v. Engelberg*, 237 Cal. App. 2d 505, 47 Cal. Rptr. 114 (1965), plaintiff recovered both specific performance and incidental damages from the party breaching the contract and intentional tort damages from the interferor.

³¹ Cases cited *supra* note 4.

³² 9 Exch. 341 (1854).

³³ *Developments in the Law of Competitive Torts*, 77 HARV. L. REV. 888, 967 (1964).

³⁴ *Id.* at 967-68.

³⁵ PROSSER, TORTS § 123 at 973 (3d ed. 1964).

³⁶ *Ibid.* See the cases cited *supra* note 5.

³⁷ TENN. CODE ANN. ch. 15, § 47-15-113 (1964), which was construed to apply to contracts in existence, contracts implied in fact, but not contracts implied at law or quasi-contracts in *Mefford v. City of Dupontonia*, 49 Tenn. App. 349, 354 S.W.2d 823 (Ct. App. 1962).

³⁸ 107 Ind. App. 503, 23 N.E.2d 615 (1939).

quences growing out of his wrongful act.”³⁹ The court further suggested that exemplary damages might have been awarded.

Not all courts applying the intentional tort measure of damages allow recovery for all unforeseen consequences resulting from the act of interference. In *Lundgren v. Freemont*,⁴⁰ the court stated that the plaintiff might recover such damages that proved to be the result of wilful and intentional misconduct, however, recovery for injury to reputation and loss of credit was limited to situations in which such injuries were reasonably foreseeable under the circumstances. In that case a general contractor sued architects for interfering with the plaintiff's contract with a high school district for the construction of certain school facilities. When the contractor notified the architects that the buildings were ready for final inspection and acceptance, the school district notified the plaintiff that they were terminating the contract for total breach on the advice of the architects. Limiting recovery to injuries “reasonably foreseeable under the circumstances” within the framework of intentional torts has the advantage of controlling excessive recovery for remote consequences, while permitting assessment for exemplary damages and compensation for mental distress in proper cases.

Wrongful motive alone may support liability in interference cases,⁴¹ and where the acts of the interferor may be described as “malicious” or “wanton” courts unanimously award exemplary damages.⁴² Punitive damages are generally considered peculiar to intentional torts, and to award punitive damages on theories analogous to either contract or negligent tort is inconsistent. There appears to be some question as to the degree of malice required to support an award for exemplary damages. The court in *Worie v. Boze*⁴³ defined legal malice as being unjustified intentional interference with a contract the defendant knows exists. The facts of the case revealed a conspiracy to breach a contract containing a clause restricting competition.

Other courts require “malice in fact” before awarding punitive damages.⁴⁴ Not every instance of interference demands the award

³⁹ *Id.* at —, 23 N.E.2d at 619-20.

⁴⁰ 307 F.2d 104 (9th Cir. 1962).

⁴¹ PROSSER, TORTS § 123 at 951 (3d ed. 1964); *but cf.* Sparks v. McCrary, 156 Ala. 382, 47 So. 332 (1908).

⁴² Note, *Damages Recoverable in an Action for Inducing Breach of Contract*, 30 COLUM. L. REV. 232, 237 (1930).

⁴³ 198 Va. 533, 95 S.E.2d 192 (1956).

⁴⁴ McNutt Oil & Refining Co. v. D'Ascoli, 79 Ariz. 28, 281 P.2d 966, 971 (1955); BLACK, LAW DICTIONARY (4th ed. 1951), defines malice in fact as: “actual or express malice. It implies a desire or intent to injure, while malice in law or implied malice

of exemplary damages. When there is unjustified intentional interference, but the methods of interference employ truthful persuasion, punitive damages should not be granted but should be limited to cases involving more predatory methods of interference such as defamation, fraud, and conspiracy.⁴⁵

Like punitive damages, recovery for mental distress resulting from the defendant's wrongful act is generally a tort measure of damages.⁴⁶ When an established business is wrongfully interfered with and injured, courts have not allowed recovery for personal discomfort and annoyance;⁴⁷ however, when the acts of interference involve elements of defamation there may be recovery for mental distress.⁴⁸

CONCLUSION

While breach of contract actions preserve the plaintiff's interest in securing the performance of the contract in accordance with the agreed terms, actions for interference with contractual relations preserve that interest from unjustified interference by third persons not parties to the contract. Both parties should contemplate the possibility of a breach of the contract when they enter into the agreement, and generally an adequate remedy for a breach is readily available by an action in contract for damages. However, unjustified interference with that contract by one not a party is not contemplated when the original agreement is made. Such interference may occur and the remedy sounds in tort, not contract.

Courts often confuse the rule of damages applicable in interference with contractual relations cases. Although the interference action protects contract rights, it does not necessarily follow that the injuries resulting from a breach by one of the contracting parties will be the same as injuries resulting from the interference by a third person. In many instances the damages may be the same, but to limit recovery in all interference cases to those injuries reasonably foreseeable by the parties at the time of contracting is to confuse a basic difference between tort and contract damages, for in tort foreseeability is considered from the time of the wrongful act, not from the time of contracting. Furthermore, interference does not require that the contract be breached. An unjust result is

means wrongful act done intentionally without just cause or excuse, and the jury may infer it as a deduction from want of probable cause."

⁴⁵ *Developments in the Law of Competitive Torts*, 77 HARV. L. REV. 888, 967-68 (1964).

⁴⁶ MCCORMICK, DAMAGES § 145 at 592 (1935).

⁴⁷ *Steiner v. Long Beach Local No. 128*, 19 Cal. 2d 676, 123 P.2d 20 (1942).

⁴⁸ *Gould v. Kramer*, 253 Mass. 433, 149 N.E. 142 (1925).

often reached in jurisdictions applying the *Hadley v. Baxendale* rule of damages for breach of contract to interference cases because the interferor is afforded the benefit of contract damages regardless of the extent of the plaintiff's injuries. In effect, the court is making the interferor a party to the contract for the purpose of determining damages.

The tort action has largely been confined to intentional acts of interference; at the present time the courts do not generally allow recovery for negligent interference with contractual relations. Intent and lack of justification are required to support the action, and to apply either a contract measure of damages or a measure analogous to negligent tort actions is inconsistent with this view. Similarly punitive damages and recovery for mental anguish are generally peculiar to intentional torts, and to award such damages in an interference action while applying a contract measure of damages is somewhat inconsistent.

It is submitted that the proper measure of damages is the intentional tort rule, but that recovery for mental anguish and the award of exemplary damages should be limited to cases in which more predatory methods are employed. Such a rule is consistent with the tendency of the courts to treat the action as an intentional tort, and permits the plaintiff to recover to the full extent of his injuries, but is flexible enough to avoid excessive recovery when the methods of interference involve unjustified but truthful persuasion.

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